

(1999) 05 AHC CK 0067
In the Allahabad High Court
Case No : C.M.W.P. No. 39755 of 1993

Kulwanti Rai Jain

APPELLANT

Vs

District Judge, Moradabad and others

RESPONDENT

Date of Decision : 11-05-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1), 21(1A), 34(8)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 17, 17(3)

Citation : (1999) 3 AWC 2215

Hon'ble Judges : Shitla Prasad Srivastava, J

Bench : Single Bench

Advocate : Anand Kumar Gupta, for the Appellant; S.C., M.C. Joshi and Gautam Chaudhary, for the Respondent

Judgement

Shitla Prasad Srivastava, J.—This writ petition under Article 226 of the Constitution of India has been filed by the petitioner for quashing the order dated 17.7.1993, which has been filed as Annexure-12 to the writ petition and also for restoring the order dated 1.9.1992, Annexure-10 to the writ petition, passed by the prescribed authority.

2. The brief facts, as stated in the petition, which are relevant for the purpose of the present petition are that the petitioner, who is a landlord filed an application against the respondent No. 3, (hereinafter referred to as the tenant) u/s 21 (1) (b) of U. P. Act No. 13 of 1972 (hereinafter referred to as the Act). The landlord alleged that the tenants (opposite party Nos. 3 and 4) are not in occupation of the shop in question situate at the ground floor ; it is in dilapidated condition and required demolition and reconstruction. The petitioner has filed a copy of the application as Annexure 1 to the writ petition.

3. The opposite party No. 3 (tenant) filed his written statement denying the condition of the shop to be dilapidated. Opposite party No. 4 also filed written

statement taking the same ground as taken by the opposite party No. 3.

4. The landlord on 1.5.1992 filed his affidavit in support of the release application which he has filed as Annexure-4 to the present writ petition. It is stated that along with the affidavit, he has also filed a report of Sri Vijin Gupta an Architect along with the photograph which is dated 7.4.1992 and is annexed as Annexure-5 to the writ petition. It is stated in paragraph 4 of the writ petition that the affidavit of the architect proving his report, map and estimate of reconstruction was filed. It is stated by the petitioner that Rule 17 framed under the Act was complied with.

5. In rebuttal, opposite party Nos. 3 and 4 filed report of one V. P. Tripathi a Mechanical Engineer. It is stated by the petitioner that the Mechanical Engineer had no qualification of civil engineer or an architect. Therefore, his report has no evidentiary value nor can it be said to be a report submitted by a qualified person.

6. Parties filed counter-affidavit and rejoinder affidavit, on the question of existing position of the accommodation in question. In rejoinder-affidavit as stated in paragraph 10 of the petition. It is stated by the petitioner that the shops are in dilapidated condition and they have money to reconstruct it. It is further stated that the Town Area, Kunderki is not sanctioning any map nor there is any bye-law relating to the sanctioning of the map.

7. The prescribed authority by its judgment dated 1.9.1992 allowed the application filed by the petitioner with a finding that the shops are in dilapidated condition and requires demolition and reconstruction and there was compliance of Rule 17 also. The prescribed authority relied upon the report of Sri Vijin Gupta the architect of the petitioner.

8. Aggrieved by the order dated 1.9.1992 passed by the prescribed authority, the opposite parties preferred an appeal before the District Judge. On 17.7.1993, the appeal filed by the tenants was allowed and release application was rejected. The petitioner has challenged this judgment and order dated 17.7.1993 passed by the District Judge.

9. Learned counsel for the petitioner Sri A. K. Gupta has vehemently urged that the short question which was to be decided in the present case was as to whether the accommodation in question is in dilapidated condition and it requires demolition and reconstruction. He submitted that the affidavit of V. P. Tripathi the mechanical engineer filed on behalf of the opposite parties has no evidentiary value as he is diploma holder in mechanical engineer and has no qualification in civil engineering or architecture. His further contention is that there was no evidence on record that there was any bye-law for construction of a building in Town Area Kunderki where shops in question are situated therefore, there was no question that Rule 17 has been followed. In support of his argument he has placed reliance on the report submitted by Vijin Gupta an architect who filed his affidavit on behalf of the landlord and tried to convince the Court that the report

was a proper report which has not been properly interpreted by the District Judge. He has criticised the report of Sri V. P. Tripathi and his affidavit to the effect that he is an interested person. Further, he submitted before the Court that the appellate court should have inspected the premises himself or directed the prescribed authority to do the same.

10. Counter-affidavit has been filed. An attack has been made by the learned counsel for the opposite parties on the affidavit submitted by Sri Vijin Gupta to the effect that there was no averment in the affidavit of architect that Rule 17 of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 has been complied with. It is stated in paragraph 7 of the counter-affidavit that Sri Tripathi who has filed an affidavit and report on behalf of the opposite parties has licence of Form 16 from the Niyat Pradhikari, Viniyamit Chhetra, Moradabad in building, architect and he is also enrolled in Moradabad Development Authority having licence No. 2 also. In paragraph 10 of the counter-affidavit while giving reply of paragraph 10 of the writ petition it is stated that the shop is in good condition and it requires no reconstruction and that there was no compliance of Rule 17 (3) framed under the Act. It is contended by the learned counsel for the respondent that the prescribed authority has not considered the effect of non-compliance of Rule 17 (3) and the revisional court has duly considered it. Therefore, the judgment of the prescribed authority is not based on the evidence nor it is in accordance with law. Rather the judgment of the District Judge is based on evidence and law. In paragraph 2 of the rejoinder-affidavit, the petitioner has stated as under :

"2. The contents of paragraph Nos. 1 and 2 of the application for permission to clean the roof is on absolutely false fact. The roof and entire shop is in dilapidated condition and under the garb of cleaning, he wants to repair it and change the position on the spot. He even tried to do it forcibly, which compelled the petitioner to file Suit No. 48 of 1994, Kulwant Kai Jain v. Devi Sahai, in the Court of Munsif, Chandausi for injunction in which the Court has granted injunction for maintaining "status quo" on 31.11.1994. The respondent has put in appearance on 23.5.1994 and since then the injunction is continuing....."

11. I have heard learned counsel for the parties at length and have also perused the judgments given by the prescribed authority as well as the revisional court and have also seen the annexures filed along with the writ petition.

12. Before considering the argument of the learned counsel for the parties. It is necessary to quote the relevant provisions of the Act. Section 21 is quoted hereinbelow :

"21. Proceedings for release of building under occupation of tenant.--(1) The prescribed authority may, on an application of the landlord in that behalf, order the eviction of a tenant from the building under tenancy of any specified part thereof if it is satisfied that any of the following grounds exists, namely,--

(a) that the building is bona fide required either in its existing form or after

demolition and new construction by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade or calling, or where the landlord is the trustee of a public charitable trust for the object of the trust.

* * * * *

(3) No order shall be made under sub-section (1) or sub-section (1A) or sub-section (2) except after giving to the parties concerned a reasonable opportunity of being heard.

(4) An order under sub-section (1) or sub-section (1A) or subsection (2), may be made notwithstanding that the tenancy has not been determined.

(5) On an order being made under sub-section (1), sub-section (1A) of sub-section (2), the building or part or appurtenant land, as the case may be, shall stand released in favour of the landlord."

13. Rule 17 which is relevant for consideration of the present case is quoted hereinbelow :

"17, Application for release on the ground of demolition and new construction.-- (Section 21 (1) (b) and 34 (8))--(1) Before allowing an application for release of a building u/s 21 (1) (b) on the ground that it is required for purposes of demolition and new construction, the prescribed authority shall satisfy Itself-

(i) that the building requires demolition ;

(ii) that a proper estimate of expenditure over the proposed demolition and new construction has been prepared ;

(iii) that a plan has been duly prepared and conforms to the bye-laws or regulations of the local authority or other statutory authority under any law in that behalf for the time being in force ; and

(iv) that the landlord has the financial capacity for the proposed demolition and new construction."

14. From a bare reading of the two provisions quoted above, it is crystal-clear as to how an application u/s 21 (1) (b) of the Act shall be disposed of. It is also clear that Rule 17 is mandatory for the disposal of such application. The prescribed authority has placed reliance on the photographs filed by the architect along with the report 17-C/4 to 6 and held that the walls of the disputed accommodation are not in proper condition. At some places even the plaster is not there. He also perused the map and came to the conclusion that the shop in possession of the landlord has fallen down. He has held that from the report submitted by the engineer of other side, it is clear that the roof is not in a good condition. He has also held that the applicant has means to construct the house but he has not given any finding that all requirements of Rule 17 have been complied with. Rather, he by quoting judgment in Zahir Ahmad v. 1st Additional

District Judge, Muzaffarnagar and others 1985 ARC 203 has held that in compliance with Rule 17, it is not necessary that the applicant should have cash in his hand to raise construction and demolition. His financial capacity is only to be seen. Therefore, according to the prescribed authority the applicant has complied with Rule 17 framed under the Act.

15. From the finding given by the prescribed authority, it is crystal clear that compliance of Rule 17 was a must and when there is no finding of the prescribed authority or any evidence on record as stated by the petitioner applicant that there was no building bye-laws in the town area Kunderki and in view of the fact that the finding has been recorded by the prescribed authority that Rule 17 has been complied with. It cannot be accepted for a single moment that there was no rule and bye-laws in the vicinity" for the construction of the building as mentioned in Rule 17 framed under the Act. The lower appellate Court has considered every affidavits available on record, reports submitted by the two engineers and has come to the conclusion that "there is nothing in the affidavit of the petitioner Kulwant Rai Jain refuting the facts mentioned by Sri Tripathi expert in his report and the affidavit relating to the fact that no portion of the shop was in a dilapidated condition. I, therefore, do not agree with the finding of the learned prescribed authority that the accommodation in question is in dilapidated condition. On the other hand, I hold that the petitioner has failed to prove that the accommodation in question is in a dilapidated state". He has also considered the requirement of Rule 17 and has come to the conclusion that the second requirement is that the proper estimate of expenditure over the proposed demolition and new construction must be prepared but the petitioner got an estimate of expenditure prepared from Sri Vijin Gupta, According to the learned District Judge, the third requirement was that the plan duly prepared conforming the two bye-laws and regulations of the local authority or other statutory authority must be there but there is nothing on record to show that the plan was duly got prepared in conformity with the bye-laws of the town area. Therefore, the requirements of Rule 17 have not been complied with.

16. Apart from the finding recorded by the prescribed authority as well as the lower appellate court, the petitioner has himself admitted in the rejoinder-affidavit that he has filed a suit for injunction against Devi Sahai, which is Suit No. 48 of 1994 in Munsif Court, Chandausi when the tenant tried to prepare and change the position on the spot and in the month of November, 1994, he got injunction order for maintaining status quo and injunction order is continuing since then. In view of the admission of the petitioner made above that when he himself got an injunction by filing a suit for maintaining status quo in the year 1994 and did not permit the tenant to get any repair, it cannot be accepted that the building was in dilapidated condition on the date when the application was filed u/s 21 (1) (b) of the Act. The aforesaid application has been filed as Annexure-1 to the writ petition. It is numbered as Application No. 6 of 1992. In paragraph 4 of the application, it is mentioned that the shops in question were constructed more than 100 years ago and now it is in dilapidated condition and

likely to fall and it can any moment fall down. In paragraph 7 of the application, he has stated that he will get the construction made after getting the map prepared according to the rules of the town area but in 1994 he has filed Suit No. 48 of 1994, Kulwant Rai Jain v. Devi Sahai and got injunction of status quo. This shows the attitude of the landlord and this also proves that the building was not in a position as stated by the petitioner in his application rather it is continuing in the same condition as it stood in the month of November, 1994. If the order for status quo was passed and five years have gone till now and the shops in question have not fallen down and further when he himself admitted that he will get a map prepared from the town area according to the rules for constructing the house in question. He admits that there is building rules and bye-laws prepared by the town area and Rule 17 must be complied with.

17. Apart from the facts mentioned above, it cannot be overlooked that when the applicant himself has filed a suit for injunction and temporary injunction of status quo is still continuing, as stated in the rejoinder-affidavit, the petitioner cannot be permitted to demolish the existing construction so long suit filed by him is pending in a competent civil court.

18. From the facts admitted to the petitioner that he will get a map prepared, according to the bye-laws and from the finding recorded by the appellate Court that Rule 17 has not been complied with I am of the view that this petition has no force and it is dismissed with cost.